DRN-5098265

Complaint

Mr A has complained about credit cards and the associated credit limit increases which NewDay Ltd ("NewDay") provided to him. He says the credit cards as well as the limit increases were irresponsibly provided.

Background

NewDay provided Mr A with two credit cards from two of its different brands. Mr A's borrowing history with NewDay is as follows:

"Marbles" branded credit card:

March 2017 – card provided with an initial limit of £300
May 2022 – limit increase to £1,300.00

"Fluid" branded credit card:

July 2021 – card provided with an initial limit of £900
December 2021 – limit increase to £1,900.00
April 2022 – limit increase to £2,900.00

In February 2024, Mr A complained to NewDay that both of his credit cards as well as the credit limit increases had been provided irresponsibly. NewDay accepted that it hadn't always acted fairly and reasonably towards Mr A. It agreed that it shouldn't have provided the Marbles credit card as well as the credit limit increase on it and while it thought it didn't do anything wrong when initially providing Mr A with the Fluid credit card and the first limit increase, it agreed that it shouldn't have increased the credit limit to £2,900.00 in April 2022.

Mr A remained dissatisfied and referred his complaint to our service. One of our investigators subsequently reviewed what Mr A and NewDay had told us. And she thought that NewDay shouldn't have provided the Fluid credit card and the first limit increase either. In other words, she thought that NewDay shouldn't have provided any of the credit that it did to Mr A. The investigator thought that NewDay needed to make a further reduction to the amount Mr A owed, on the Fluid credit card, with the third-party debt purchaser that his balance had been sold to.

Neither NewDay nor Mr A disagreed with our investigator's assessment. NewDay didn't agree with the decision to uphold the complaint about the Fluid credit card in full. Mr A argued that NewDay needed to pay the refund to him, rather than the third party that had purchased his debt. He also said NewDay shouldn't report any information to credit reference agencies as the balances on his accounts had been sold. As both parties were in disagreement with the investigator's assessment the case was passed to an ombudsman.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As the parties are in agreement that Mr A should not have been provided with the Marbles credit card at all, as well as the final limit increase on the Fluid credit card, I do not need to look at whether NewDay acted fairly and reasonably in the course of these lending decisions.

As this is the case, this decision is solely considering whether NewDay acted fairly and reasonably towards Mr A when initially providing the Fluid credit card as well as the first credit limit increase on it. I'll then consider whether fair compensation is affected by my findings on this, bearing in mind that NewDay accepts it shouldn't have provided the Marbles credit card, what the position in relation to the Fluid credit card is and NewDay has sold Mr A's debt balances to a third-party debt purchaser.

I've started by considering at whether NewDay treated Mr A fairly and reasonably when providing him with his Fluid credit card and the first limit increase.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr A's complaint.

NewDay needed to make sure that it didn't lend irresponsibly. In practice, what this means is NewDay needed to carry out proportionate checks to be able to understand whether Mr A could afford to repay before advancing any credit.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I've kept this in mind when considering Mr A's complaint.

<u>Did Newday carry out reasonable and proportionate checks before agreeing to provide Mr A with his Fluid credit card and the first limit increase on it?</u>

NewDay says that it initially agreed to provide Mr A with a Fluid credit card after it completed an income and expenditure assessment on him. During this assessment, NewDay says it asked Mr A about his income and carried out credit searches on him. It says that the information it obtained led it to conclude that Mr A could afford the low amount of additional credit it was offering him on the Fluid credit card.

On the other hand, Mr A says the Fluid credit card was unaffordable and shouldn't have been provided.

I've carefully thought about what Mr A and NewDay have said.

Mr A was provided with a Fluid credit card which had a limit of £900 and as this was a revolving credit facility, NewDay was required to understand whether Mr A could repay £900 within a reasonable period of time. However, as this was an additional revolving credit facility, provided when Mr A already had his Marbles credit card, NewDay was in effect required to understand whether Mr A could repay £1,200.00 within a reasonable period of time.

I understand that NewDay's credit check showed that Mr A didn't have any county court judgments ("CCJ") recorded against him. While this may be the case, it's fair to say that the credit check did show that Mr A had two defaulted accounts. I do agree that if taken in isolation a couple of defaulted accounts might not necessarily have proved to be a problem and that providing a low credit limit, as NewDay argues it provided on the Fluid credit card here was a way of mitigating the risks to Mr A.

However, I'm mindful of the fact that Mr A wasn't a new customer to NewDay as he already had his Marbles account. Therefore, NewDay was required to take into account its lending with history with Mr A while he had the Marbles credit card. And there is no dispute that Mr A ran into difficulties with the much lower credit limit that he had on the Marbles credit card.

I say this because Mr A had to go into a payment plan in order to clear arrears. I'm also concerned by NewDay's assertion that Mr A had no issues with any of his existing credit at this time as Mr A was over the credit limit on the Marbles credit card in the month before his Fluid credit card was provided. So Mr A appeared to be having difficulty managing the £300 limit on his Marbles credit card.

As this is the case, I'm satisfied that NewDay needed to get a good understanding of Mr A's circumstances – particularly around his living expenses – before it could be able to reasonably conclude that Mr A could afford to repay three times more than what his actions appear to suggest he was already struggling with, within a reasonable period of time.

As I can't see that NewDay did this, either at the time it provided the credit card or the first limit increase, I don't think that the checks it carried out before it provided Mr A the Fluid credit card (or the limit increase) were reasonable and proportionate.

<u>Would reasonable and proportionate checks have indicated to NewDay that Mr A would not have been able to repay the Fluid credit card as well as the first limit increase granted on it?</u>

As reasonable and proportionate checks weren't carried out before the Fluid credit card as well as the first limit increase was provided, I can't say for sure what they would've shown. So I now need to decide whether it is more likely than not that proportionate checks, at the respective times, would have told NewDay that Mr A would have been unable to sustainably repay card the Fluid credit card and the limit increase.

I think it's worth me explaining that NewDay was required to establish whether Mr A could make the required repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Having considered the information provided, I'm satisfied that Mr A was struggling to manage his existing commitments. While NewDay says its credit checks showed that Mr A wasn't using payday loans at the time, the information Mr A has provided shows that he was. Furthermore, the statements leave me with a view on why Mr A's finances were it the position that they were in and why he ended up struggling to repay such a low amount on his Marbles credit card.

I think that proportionate checks would have all of this and would also have shown NewDay that Mr A was already in a cycle of unsustainable credit, which meant he was unlikely to be able to repay any further credit without borrowing further, or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr A would not have been able to make the repayments to the Fluid credit card (and the first credit limit) without borrowing further and/or suffering undue difficulty.

As NewDay provided the Fluid credit card as well as the first limit increase to Mr A in these circumstances, I'm satisfied that acted irresponsibly in providing this additional credit card and I'm upholding Mr A's complaint about NewDay's decision to provide the Fluid credit card and the first limit increase.

NewDay's actions when Mr A ended up in payment difficulties

I've also thought about what Mr A has said about not being treated fairly when he entered into a debt management plan. I understand that Mr A is particularly unhappy with the actions NewDay took during a phone call in January 2023. NewDay has confirmed that it no longer has a recording of this call with Mr A. I don't think that this is surprising given it is almost two years since this call took place.

Nonetheless, Mr A is correct to say that a lender should not pressure a customer to pay more than they can if they are in financial difficulty. However, I'm mindful of the overall position at this time. NewDay says that the call it had with Mr A was because he didn't want it to default his accounts. Given this call took place after Mr A's debt management company had already proposed a repayment amount for the Marbles and Fluid credit cards to NewDay, I do think that this call was more likely than not to do with what would happen on the account afterwards.

I understand that NewDay's advisor told Mr A that the amount the debt management company had proposed as a repayment wasn't enough to stop his account from defaulting. This doesn't seem unusual or atypical to me, as an account will normally end up being defaulted after a customer goes into a debt management plan. This is because it will be clear that the customer will not return to a position where they can resume making contractual payments.

I think that NewDay's advisor might have said that the debt management company needed to propose a payment amount that was high enough to stop the account from defaulting, if that is what Mr A wanted to happen. But given Mr A is likely to have been insisting that his accounts shouldn't be defaulted, I don't think that this is the same as NewDay refusing to accept payments through a debt management plan, or it pressuring Mr A to make payments he couldn't afford. In my view, NewDay was simply informing Mr A of the circumstances where his accounts wouldn't be defaulted.

To all intent and purposes it looks like NewDay was prepared to accept the payment that the debt management company proposed and I'm not persuaded that it was unreasonable to default the accounts at this stage. After all, NewDay's relationship with Mr A had clearly broken down and Mr A was not in a position to resume sufficient enough payments to clear the balance within a reasonable period of time. Nor did it seem that the position was likely to change going forward.

Bearing all of this in mind, I'm not persuaded that NewDay acted unfairly or unreasonably towards Mr A when Mr A got in contact about his debt management plan in January 2023.

Is it fair and reasonable for NewDay to pay the compensation to the third-party debt purchaser to reduce what Mr A owes?

Mr A is unhappy that NewDay proposes to reduce the balances on his accounts, rather than pay him the amount of the interest reduction. He says that as NewDay no longer owns the balances it should not be paying the refunds to the third-party without his permission.

I've thought about what Mr A has said. However, it is my understanding that the amount of the balances that NewDay sold on to the third-party significantly exceed the amount of the interest, fees and charges that now need to be recredited. This will be the case even though I've now also upheld the complaint about the Fluid credit card from the outset.

In these circumstances, it's fair to say that an adjustment of Mr A's debt needs to take place rather than it being a case of a refund being due to Mr A. I say this because it looks like Mr A hasn't paid the interest and charges that his account balances need to be reduced by. So Mr A appears to be asking for a refund of payments which the current balance on his accounts mean that he, in effect, hasn't actually made.

I'd also point out that NewDay's proposal to reduce the outstanding balances rather than pay an equivalent amount to Mr A is what I'd typically expect a lender to do in circumstances such as these. There are some occasions where a lender might prefer to pass the funds directly to a consumer leaving them with the responsibility to settle the balance with a third-party debt purchaser, rather than it doing so. However, there is no requirement for a lender to settle things in this way. And, in this case, NewDay has confirmed that it would prefer to settle matters with the third-party debt purchaser itself. I don't think that this is unreasonable.

In reaching my conclusions, I've thought about what Mr A has said about the outstanding balances being reduced in this way does not account for the fact that the third-party might have accepted a lower amount to repay what it is owed (i.e. it may have been prepared to accept a short settlement). He's also said that NewDay reducing his balances in this way could affect his debt management plan and mean that his other creditors do not receive what they are entitled to.

However, the position Mr A will be left in is that the balances on his Marbles and Fluid accounts will be adjusted to what they would have been had interest, fees and charges not been added. I'm satisfied that this puts things right in a way that's fair and reasonable.

I appreciate that this prevents Mr A from negotiating a short settlement with the third-party debt purchaser and therefore a more advantageous position. But I'm afraid that this does not mean that it would be unfair for NewDay to reduce Mr A's balances in the way that it proposes to, or that this wouldn't produce a fair and reasonable outcome.

Furthermore, I would also add that it isn't my role to enforce the terms of Mr A's debt management plan. If Mr A believes that NewDay's proposed course of action affects his debt management plan, this is a matter he will need to take up with the administrator of the plan.

Mr A's credit file

Mr A has said that NewDay should remove all reference it has recorded about these accounts from his credit file as the balances on his accounts have been sold and it is for the debt purchaser to report the position going forward.

I've thought about what Mr A has said.

Mr A is correct in saying that it is for the third-party debt purchaser to report the balance on his accounts going forward. However, NewDay still had credit agreements that were in force with Mr A from the period that the Marbles and Fluid credit cards were provided to the date that balances on these accounts were sold.

Lenders are required to report accurate information to credit reference agencies. So NewDay reporting that Mr A had Marbles and Fluid credit cards with it from the period they were opened (subject to the relevant reporting periods) to the date the accounts were sold to credit reference agencies is an accurate reflection of the history of these accounts.

I'm therefore satisfied that NewDay should accurately report what happened on the accounts up until the balances on them were sold.

Fair compensation – what NewDay needs to do to put things right for Mr A

Overall and having carefully considered everything, I'm satisfied that it would be fair and reasonable, in all the circumstances of Mr A's complaint, for NewDay to put things right in the following way:

- liaise with the third-party debt purchaser to rework Mr A's Marbles and Fluid credit card accounts to ensure that all interest, fees and charges added to both facilities, from the outset, are removed. All late payment and over limit fees should also be removed.

My final decision

For the reasons I've explained, I'm upholding Mr A's complaint. NewDay Ltd should put things right in the way that I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 December 2024.

Jeshen Narayanan
Ombudsman